(Judgment Reserved)

IN THE HIGH COURT OF UTTARANCHAT AT NAINITAL

Writ Petition No. 4294 (S/S) of 2001

Virendra Mohan Uniyal,
Son of late Sri T.R. Uniyal,
At present working as Assistant Account Officer,
Mussorie Dehradun Development Authority,
District-Dehradun. Petitioner.

Versus

1. State of U.P. , through Deputy Secretary, Finance (Audit Section), Lucknow.
2. Director, Local Fund Accounts Department, U.P. Allahabad.
3. Under Secretary Vigilance Section-3, Government of U.P., Lucknow.
4. Vice-Chainrman, Mussorie Dehradun Development Authority, Dehradun.

....Respondents

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Rakesh Thapliyal, learned counsel for the petitioner, learned standing counsel for State of U.P. and Sri S. Dhulia, Sr. Advocate, assisted by Sri N.S. Pundir, learned counsel for respondent no. 4.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of Certiorari quashing the order dated 29.07.2001 (Annexure No. 3 to the writ petition) passed by Director, Local Fund Accounts Department, U.P. Allahabad by which a punishment of censure was awarded to the petitioner and further a recovery of Rs. 51,446/- is sought to be made from the salary of the petitioner.

Brief facts of the case as narrated in the writ petition are that petitioner was initially appointed as Auditor on 16.3.1980 in the office of Local Funds Accounts U.P. at Allahabad. Thereafter, He was promoted to the post of Sr. Auditor. In the year 1989, the petitioner was sent on deputation as Assistant Accounts Officer in Doon Valley Special Area Development Authority and thereafter, he was transferred to Mussorie Dehradun Development Authority in pursuance to the aforesaid order.

On 13.01.1996, a letter was issued by Superintendent of Police, U.P., Vigilance Department to the Secretary, Mussorie Dehradun Development Authority regarding open inquiry to be conducted by the Vigilance Department in pursuance to the Government Order dated 15.10.1996. The aforesaid letter reveals that an open inquiry was directed to be conducted against Sri K.L. Sharma, the then Vice Chairman, Sri Srawan Kumar, the then Secretary and Sri Yashpal Sharma, the then Assistant Engineer of Mussorie Dehradun Development Authority with regard to serious charges of financial irregularities by flouting the Rules and Government Orders with an intention to cause loss to the Government. The Superintendent of Police, Vigilance asked for comments from various employees of Mussorie Dehradun Development Authority in respect to their duties and liabilities. In this regard, petitioner has also submitted his comments on 03.08.1998. Neither any chargesheet was furnished to the petitioner nor any notice was given in respect to the said inquiry and the impugned order dated 29.07.2001 has been passed by Director, Local Fund Accounts Department, U.P., Allahabad, which is the order under challenge. The Director, Local Fund Accounts Department, U.P. Allahabad has passed as order dated 29.07.2001 awarding the punishment

of censure to the petitioner and direction for recovery of amount of Rs. 51,446/- from salary of the petitioner.

From the perusal of the impugned order, it reveals that two charges were leveled against petitioner. First charge was that petitioner has executed a contract with M/s Novil Kumar on 18.07.1994 and the said contract was pertaining to the construction of road in Jakhan Colony. Second charge was after executing the aforesaid contract a deviation was made on the contract amount by mentioning the amount as Rs. 3,07,861/- in place of Rs. 50,632/- by increasing the length of three roads to 870 metres, for which no tender was invited by the petitioner.

No counter affidavit has been filed b y respondents no. 1 to 3, who are the contesting parties. Respondent no. 4 has filed counter affidavit. In the counter affidavit filed by respondent no. 4 the authority has stated that the petitioner has wrongly made Mussorie Dehradun Development Authority as party. As the order challenged by him was passed by respondent no. 2 i.e. Director, Local Fund Accounts Department, U.P. Allahabad. It is also stated in para 2 of the counter affidavit that petitioner was Assistant Acconts Officer, Mussorie Dehradun Development Authority, the parental department of petitioner was Local Fund Accounts Department headed by Director. He joined Mussorie Dehradun Development Authority in the year 1989 on deputation and his services were finally merged in Mussorie Dehradun Development Authority with effect from 24.11.1990.

The petitioner has challenged the impugned order before this court and the is court vide order dated 05.09.2001 stayed the operation of impugned order. After passing the

Order by the High Court of proceedings of recovery were kept in abeyance by Mussorie Dehradun Development Authority.

The petitioner has assailed the impugned order on various grounds. The submission of the petitioner is that order dated 29.07.2001 is wholly illegal and unsustainable in view of the fact that neither any chargesheet was furnished to the petitioner nor any notice was given and the order impugned has been passed without following the principle of natural justice. There is no rebuttal of the fact by the respondents and thus, it is admitted fact that petitioner was not given any opportunity of hearing nor any chargesheet was furnished to him prior to passing the order of punishment against him.

It is well settled law that any punishment order without giving any opportunity of hearing or without even furnishing chargesheet against the delinquent officer is in violation of principal of natural justice and as such, is not sustainable in the eyes of law. Neither the petitioner was given chargesheet nor he was given any opportunity of hearing and even the inquiry report was not supplied to the petitioner before passing the impugned order, which is mandatory requirement. These facts are not disputed by the learned counsel for the respondents. The second ground on which the impugned order has been challenged is that petitioner's services were finally merged in Mussorie Dehradun Development Authority with effect from 29.11.1990 and he was no more with respondent no.2 and as such, lien of the petitioner with Local Fund Accounts Department, U.P., Allahabad has come to an end on final merger of the petitioner's services in Mussorie Dehradun Development Authority and in this situation respondent no. 2 had no jurisdiction to pass order of punishment against the

petitioner. This fact is also not disputed by the respondents. On the contrary Mussorie Dehradun Development Authority in para 2 of the counter affidavit has admitted the fact that petitioner who was earlier working as Sr. Auditor in Local Fund Accounts Department, U.P., Allahabad headed by Director, was sent on deputation in the year 1989 and his services were finally merged with Mussorie Dehradun Development Authority on 29.11.1990.

On the facts stated above, I found force in the submission of learned counsel for the petitioner that the respondent no. 2 has exceeded in his jurisdiction and he was not competent authority to pass punishment order against the petitioner as the petitioner was employee of Mussorie Dehradun Development Authority and not the employee of Local Fund Accounts Department, U.P., Allahabad.

Learned counsel for the petitioner has submitted that on 09.11.2001 State of Uttaranchal was created and after creation of State of Uttaranchal respondent no. 2 was not having any jurisdiction even if petitioner is treated to be working under respondent no. 2.

Learned counsel for the petitioner has further submitted that for subordinate services there is Punishment and Appeal Rules 1932 and the explanation of the person concerned and reason for punishment should be recorded according to Rule 5 (B) of the said Rules. The said Rules were substituted by U.P. Governments (Discipline and Appeal) Rules 1999 by way of notification dated 09.06.1999. Rule 10 of the said Rules prescribed the procedure for imposing more than one punishment. Sub rule 2 of Rule 10 prescribes mandatory procedure. which provides that the summary of charges should be communicated to the concerned employee and explanation with respect to the charges is required to be

sought from him and only thereafter, punishing authority after considering the explanation can pass order for punishment. Said procedure was not adopted in case of the petitioner. From the perusal of impugned order, I found force in the submission of learned counsel for the petitioner that procedure prescribed under Rules has not been followed.

The charges leveled against the petitioner is relating to tender. Petitioner belongs to Accounts cadre and he has no nexus with invitation of tender.

The submission of the petitioner is that petitioner being an employee of accounts cadre he has no nexus for invitation of tender or execution of contract. In support of his submission, he has placed reliance upon paras 367 and 368 of the Financial Hand Book Volume 6 pertaining to public work accounts rules. Para 367 is quoted as under.

"Engineers and their subordinates are responsible that the terms of contracts are strictly enforced and that no act is done tending to nullify or vitiate a contract. All contract deeds must be executed on one or other of the standard forms, but they may be modified to suit local requirements after consultation with legal advisors of the Government. All agreements or security bonds entered into with the department contractors for execution of work or for securing the due performance of contracts are exempt from stamp duty."

From the above para it is clear that execution of the contract is the job of the engineers and not Assistant Accounts Officer.

Para 368 of the Financial Hand Book Volume 6 is Quoted as under:

" No authority lower than an assistant engineer or the officer in charge of a sub-division may accept any tender or make a contract for public works. Notifications legally empowering officers to execute on behalf of the Governor, the different classes of deeds, contracts and other instruments are issued by judicial department

this power is, however, in each case subject to the departmental rules laying down the powers of officers to enter into contracts."

Thus from the aforesaid para also Assistant Engineer or the Office In charge of Sub Division may accept any tender or making contract for public works.

According to the petitioner, these paras clearly show that petitioner had no nexus with the charges which have been leveled against him.

For the reasons stated above, writ petition is allowed Order dated 29.07.2001 passed by Director, Local Fund Accounts Department, U.P., Allahabad is quashed. No order as to costs.

(M.M. Ghildiyal, J.)

October 27, 2005
SKSharma